

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE: COLUMBIA UNIVERSITY  
PATENT LITIGATION**

**MDL NO. 1592**

**IMMUNEX CORPORATION, a  
Washington Corporation and  
AMGEN INC., a Delaware Corporation,**

**CIVIL ACTION NO.: 04-10740-MLW**

**C. D. Cal. No. CV 03-4349 MRP (CWx)**

**Plaintiffs,**

**Judge Mark L. Wolf**

**vs.**

**THE TRUSTEES OF COLUMBIA  
UNIVERSITY in the City of New York, a  
New York Corporation,**

**Defendant.**

**AND RELATED COUNTERCLAIM.**

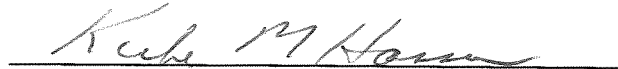
**SUBMISSION OF PROPOSED ORDER DISMISSING  
CERTAIN CLAIMS FOR RELIEF**

In response to paragraph 1 of the Court's Order of May 17, 2005, plaintiffs, Immunex Corporation and Amgen Inc. (collectively "Amgen"), and defendant, The Trustees of Columbia University in the City of New York ("Columbia"), submit the attached proposed order regarding the claims in Amgen's Second Amended Complaint that the parties agree should be dismissed

pursuant to, and without waiving rights as to, the Court's November 5, 2004 Order. Amgen further agrees that if its motion to amend and supplement its Second Amended Complaint is denied, the Third Claim for Relief in the Second Amended Complaint would also be dismissed as a result of the Court's November 5, 2004 Order.

Dated: June 9, 2005.

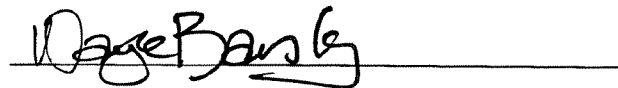
Respectfully submitted,



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**[PROPOSED] ORDER OF DISMISSAL**

Pursuant to this Court's Memorandum and Order dated November 5, 2004, it is hereby

ORDERED that the following claims are dismissed for lack of subject matter jurisdiction under  
Federal Rule of Civil Procedure 12(b)(1):

- o Second Claim For Relief: Declaratory Judgment that Amgen and Immunex Have No Contractual Royalty Obligations Because the '275 Patent Is Invalid By Reason of Double Patenting and Statutory Grounds (28 U.S.C. § 2201);
- o Fourth Claim For Relief: Declaratory Judgment that Amgen and Immunex Have No Contractual Royalty Obligations Because the '275 Patent Is Unenforceable By Reason of Prosecution Laches (28 U.S.C. § 2201);

- Fifth Claim For Relief: Declaratory Judgment that Amgen and Immunex Have No Contractual Royalty Obligations Because the '275 Patent Is Unenforceable By Reason of Patent Misuse (28 U.S.C. § 2201);
- Sixth Claim For Relief: Declaratory Judgment that Amgen and Immunex Have No Contractual Royalty Obligations Based on Non-Infringement of the '275 Patent (28 U.S.C. § 2201); and
- Eighth Claim For Relief: Declaratory Judgment that the '275 Patent is Not Infringed, Is Invalid, and Is Unenforceable (28 U.S.C. § 2201).

Dated:

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HON. MARK L. WOLF  
UNITED STATES DISTRICT JUDGE